

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT E. ROBBINS

Claimant

VS.

SHAWNEE COUNTY

Self-Insured Respondent

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Docket No. 1,044,921

ORDER

Claimant requested review of Administrative Law Judge Rebecca Sanders' August 27, 2012 Award. The Board heard oral argument on February 6, 2013. Jeff K. Cooper, of Topeka, Kansas, appeared for the claimant. Karl L. Wenger, of Kansas City, Kansas, appeared for respondent and its insurance carrier (respondent).

Claimant sustained a compensable work-related accidental injury on August 8, 2008. Judge Sanders adopted the 21% impairment to the right lower extremity provided by the court-ordered physician, Vito J. Carabetta, M.D. Judge Sanders also found claimant had a 5% preexisting impairment to his lumbar spine. Judge Sanders impliedly did not find that claimant proved any new whole body impairment as a result of his accidental injury.

ISSUES

Claimant argues he suffered a 25% whole person functional impairment based on Dr. Koprivica's impairment rating. Claimant contends he proved whole body impairment due to an ilioinguinal nerve injury. Claimant argues respondent failed to prove that claimant had preexisting low back impairment. Respondent maintains that Judge Sanders' Award should be affirmed.

The issue concerns the nature and extent of claimant's impairment, including:

- (A) Did respondent prove claimant had at least a 5% preexisting permanent impairment involving his low back? Conversely, did claimant prove increased impairment above and beyond his preexisting permanent impairment involving his low back?
- (B) Does claimant's ilioinguinal nerve injury entitle him to whole body impairment?

FINDINGS OF FACT

Claimant has worked for respondent since 1972. On August 8, 2008, claimant was climbing up the side of a truck to retrieve a bag that was caught when he slipped, fell and landed on his right foot and leg. Claimant testified he had right back pain and pain down his leg, in addition to agreeing that he had "right butt cheek" pain.¹

Claimant had surgery to his right foot, therapy, and various low back injections. Claimant also developed an inguinal hernia when lifting a box during a functional capacity evaluation (FCE). Such injury necessitated an inguinal hernia repair. Claimant was off work for approximately two years, but returned to the same job without restrictions. Claimant has not sought medical treatment since returning to work, but testified he continues to experience right foot pain, constant back pain which occasionally radiates down his right leg, and groin pain. Claimant testified he is no longer able to do activities around his house such as painting, trimming trees and landscaping.

Claimant had prior low back problems. In 1983 or 1986,² claimant had a work-related accident involving his low back and neck. Claimant was hospitalized for a week with extreme low back pain and received treatment in the form of multiple epidural injections, physical therapy and a back brace. After being off for seven to eight months, claimant returned to work without restrictions. He had a January 14, 1987 accidental injury involving his low back and neck. Claimant also testified he had a 1993 work injury in which he kinked his back and was off work for four months as a result.

Edward J. Prostic, M.D., performed an independent medical evaluation on April 8, 1993 at claimant's prior attorney's request stemming from the 1987 claim. Claimant had neck stiffness and tightness and frequent pains in the center and right side of his low back below the waist, but had no radicular symptoms. X-rays showed that osteophytes at the lower lumbar segments had increased in size from prior x-rays. Dr. Prostic observed that claimant had no lumbar spine muscle spasm, but spasm in the gluteus muscle (the buttocks). Dr. Prostic opined that claimant aggravated preexisting sprains and strains and required continued use of medicine to relieve his symptoms. Dr. Prostic provided a 12.5% impairment to the body as a whole based upon the *AMA Guides to the Evaluation of Permanent Impairment*, Third Edition.

Claimant testified that for 10-15 years before the regular hearing, he took pain medication for his neck that helped his low back. He denied experiencing any back problems and was able to do his regular job without restrictions between 1993 and 2008:

¹ P.H. Trans. at 38.

² Claimant testified it was 1983, but records reflect it may have been 1986. R.H. Trans. at 21. It is also possible claimant intended to refer to a 1987 accidental injury.

Q. All right. As far as the pain and the problems you have now, before this injury did you have any of those kind of problems?

A. No, not at all.

Q. Okay. There was a work injury you had back in 1983 while working for the County. Did you return to work following that injury?

A. Yeah, I did.

Q. Did you have any problems doing your job after that injury?

A. No.

Q. Were you given any restrictions at that time?

A. No.

Q. Did you receive a settlement for that injury?

A. I did receive a settlement for it.

Q. Okay. Do you remember how much that settlement was?

A. No, I don't. I could not tell you.

Q. There was also some records of some problems with your back in 1993. Did you return back to work after 1993?

A. Yeah.

Q. How long did that problem last?

A. It was just a few months or so that that problem happened.

Q. Okay. Did you have any injections at that time?

A. No, it just worked itself out.

Q. For the last – for 15 years before '93 and '08, were you able to do your regular job?

A. I was able to do everything, yes.³

³ R.H. Trans. at 10-12.

Claimant testified that he had a prior 5% rating, but did not know if it concerned his low back or neck.

At respondent's request, Dr. Prostic apportioned his 1993 rating between the lumbar and cervical spine and converted the rating based upon the fourth edition of the AMA *Guides*⁴ (hereinafter *Guides*). Dr. Prostic provided a report dated July 9, 2012, wherein he stated:

I have reviewed my records on Mr. Robbins. As of April 8, 1993, he had 7.5% permanent partial impairment of the body as a whole from his lumbar spine and 5% of the body as a whole from his cervical spine.⁵

Dr. Prostic's deposition was taken on July 17, 2012. Dr. Prostic testified:

Q. His accident was back in 1987?

A. Correct.

Q. At the top of the second page he reported to you he was having frequent pain in the center and right side of his low back. Was he making that report to you more than six years after his accident?

A. Yes.

Q. Do you have an opinion as to whether or not the impairment to his low back then from the 1987 accident was permanent?

A. Yes, I have an opinion.

Q. What is your opinion?

A. That his condition was permanent.

Q. For that you have given him under the AMA Guides, Fourth Edition a 5 percent impairment rating; is that correct?

A. Yes.⁶

⁴ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All further references to the *Guides* are based upon the fourth edition of the AMA *Guides*.

⁵ Prostic Depo., Ex. 2.

⁶ *Id.* at 7.

Dr. Prostic testified regarding how he arrived at apportionment of claimant's low back impairment as follows:

- Q. The 12.5 percent rating in your '93 report is not broke out between the back and the neck. How is it you're able to apportion that in 2012 when the evaluation was back in '93 and you said you didn't have any recollection of this gentleman?
- A. July 9th there was a telephone call from Mr. Karns asking if I could read the report that I had previously furnished and apportion the rating and that was the answer I gave Mr. Karns.
- Q. Is that based on your best estimate, Doctor, reviewing your report, or how did you come up with that breakdown?
- A. It is understanding my own style of rating and looking at the factors that were considered at the time I made the apportionment. I would have considered the dysrhythmia and the tenderness of the gluteus medius muscles more highly than the facial grimacing during the neck exam.
- Q. Is the gluteus medius muscle ratable under the AMA Guides, Fourth Edition?
- A. Well, you should consider this a trigger point, so the combination of tenderness at that trigger point and dysrhythmia is highly suspicious of dysfunction at L5-S1.⁷

At claimant's attorney's request, P. Brent Koprivica, M.D., evaluated claimant on December 21, 2009 and January 11, 2011. Claimant complained of low back pain, right groin pain and right foot pain. Dr. Koprivica opined claimant sustained a 26% impairment to the right lower extremity and a 20% whole person impairment for the spine disorder and motion deficits, similar to having loss of motion segment integrity. Dr. Koprivica justified the 20% low back rating because claimant had multiple pain generators in his low back and multi-level spinal disease. Dr. Koprivica did not assign any impairment for the inguinal hernia, noting that Kansas law precluded a rating for a hernia.⁸ Dr. Koprivica noted that the ilioinguinal nerve can be rated, but he did not provide a rating for the ilioinguinal nerve.⁹ When combining his ratings, Dr. Koprivica found claimant sustained a 25% whole person impairment based upon the *Guides*.

⁷ *Id.* at 10-11.

⁸ Koprivica Depo. at 12-13.

⁹ *Id.* at 13, 16, 33.

Claimant told Dr. Koprivica that he was asymptomatic before his 2008 accidental injury.¹⁰ Claimant did not specifically tell Dr. Koprivica about his 1986 or 1987 injuries and settlements.

Dr. Koprivica's deposition was taken on July 5, 2012. When testifying on direct examination regarding claimant's preexisting impairment, Dr. Koprivica stated:

- Q. Can you have a prior impairment rating or a pre-existing rating without symptoms, Doctor?
- A. If you're asking factually, I have people do that every day. By definition if you have a true impairment that's permanent and ongoing, that impairment implies loss of ability to do activities of daily living. That means that the symptoms from that condition, the limitations from that condition limit you. [Claimant] denied that. So he would not have impairment by definition if his history is accurate.¹¹

Dr. Koprivica further testified:

- Q. He had a settlement hearing in 1992 which related to, that was the \$30,000 settlement which was related to a February 7, 1986 injury. And then the subsequent settlement was in 1995 for \$4,350 for either a January 2nd or a January 14th, 1987 injury. With regard to that second accident, the 1987 injury, he was evaluated by Dr. Prostic. He was evaluated by Dr. Prostic on April 8th, 1993. I want you to assume with me for a second that in Dr. Prostic's report, six years after this 1987 injury, in April of 1993, he reported the patient continues to have frequent pains at the center and right side of his low back below the waist. He has worsening symptoms with sitting and usually with prolonged standing. He also has worsening with prolonged driving and twisting and sometimes with lifting. He is also worsened by inclement weather. No radicular symptoms reported with either leg. Would that be different, that he's reporting frequent pains six years after his accident to the doctor that's evaluating him in 1993? Is that different from the history he gave you of not being symptomatic after those prior injuries?
- A. In my opinion it would be different from the history I was provided.¹²

¹⁰ *Id.* at 17, Ex. 2 at 5, 6, 16.

¹¹ *Id.* at 18. Under Kansas law, functional impairment "means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein." K.S.A. 44-510e(a).

¹² Koprivica Depo. at 20-21.

. . .

Q. For someone who is experiencing symptoms that he reported to Dr. Prostic six years later and was off work for seven or eight months, was hospitalized for a week, had six epidurals that he told you about, would a 5 percent impairment rating to the low back based on a DRE II category be a reasonable impairment rating for that event?

. . .

A. What I don't know from your question is whether or not there was evidence of radiculopathy or not.

Q. He says no.

A. So no evidence of radiculopathy. If you do that under the injury model, a II can be an appropriate number. It sounds like, from the way you worded the question and represented to me, that he was having more problems than a 5 percent. It would depend on other facts as to what structural changes were present back then as to whether or not there would be a justification to assign a higher number. Back before '93 we were using, we weren't using the Guides. So I'm not sure what those numbers mean always. But in '93 it was range of motion model. And I would think that the number would be higher than a 5 percent from the range of motion model from the use of the Third Edition of the Guides.

Q. If you were rating him under the Fourth Edition, would it be at least a 5 percent impairment?

A. That would be my opinion if those conditions persisted, yes.¹³

Claimant told Dr. Koprivica that he had a prior 5% impairment rating to the body as a whole for his 1983 low back injury. Dr. Koprivica testified that a 5% preexisting impairment rating to the body as a whole based on claimant's low back would be reasonable. Dr. Koprivica testified claimant *could* have a current 15% impairment to the body as a whole based on gait abnormality and *could* have a 7% whole body rating based on the ilioinguinal nerve, but he did not actually rate claimant using such criteria.¹⁴ He also noted that any permanent groin impairment would involve the body as a whole.¹⁵

¹³ *Id.* at 22-23.

¹⁴ *Id.* at 33-34.

¹⁵ *Id.* at 34.

On September 7, 2011, Vito J. Carabetta, M.D., performed a court-ordered independent medical evaluation. Claimant complained of low back pain with occasional right sciatica, right foot pain and right groin pain. Dr. Carabetta noted claimant had right tarsal tunnel and plantar fascia releases, in addition to diagnosing claimant as having a chronic lumbar sprain, degenerative disc disease, and right ilioinguinal neuritis.

Dr. Carabetta provided an overall 21% impairment to the right lower extremity based on combining a 15% impairment rating involving claimant's tarsal tunnel, plantar fascia, ankle and hindfoot, as well as a 7% impairment rating for irritation of the ilioinguinal nerve. When considering the lumbar area, Dr. Carabetta found claimant had a 5% whole person impairment, but noted: "Some permanent impairment assessment was apparently made, and if I am understanding the past records correctly, a 5% whole person impairment had been previously assessed. If this is the case, then I would advise the Court that there has been no net change in the degree of impairment stemming from the lumbar spine."¹⁶

On June 25, 2012, Dr. Carabetta's testified:

Q. . . . Having heard this information regarding Mr. Robbins' prior low back condition, do you have an opinion as to whether or not Mr. Robbins suffered any additional impairment to his low back as a result of this injury of August 6 [sic], 2008?

. . .

A. My answer would be yes, I do have an opinion, The way I stated it in my report was that he is at this point at a five percent whole person impairment. If he had that much established previously, he does not get a brand new spine, he does not revert to zero, there is no reset button on his spine, he will carry that with him as a permanent impairment forever more.¹⁷

Dr. Carabetta further testified on cross examination:

Q. At the time you saw him, did you see any records or did you have any documents that would allow you to state that based on review of the records that you saw, diagnostic testing that you did or had seen, that prior to August 8, 2008 there was a rateable condition utilizing the AMA Guides, 4th Edition?

A. No. Actually, your client only in passing noted the injury back in the '90's and did bring up the five percent figure himself.

¹⁶ Carabetta Depo., Ex. 1 at 4.

¹⁷ *Id.* at 13-15.

...

Q. And if you get a five percent for a problem at the L4-L5 level, are you precluded later on from getting another five percent for an injury to a different level of the spine, say, L5-S1 or L1-L2?

A. You get it for the entire lumbar spine. So the answer is yes, you are precluded. . . .¹⁸

Regarding claimant's hernia, Dr. Carabetta testified that claimant did not have any impairment from the hernia itself, but had a 7% impairment rating due to irritation of the ilioinguinal nerve. Dr. Carabetta's report noted that such impairment concerned the "groin region."¹⁹ Dr. Carabetta's report indicated Claimant had intermittent burning and aching pain in his right groin, sometimes lasting a week, several times per year. Dr. Carabetta further testified:

Q. Okay. You did rate seven percent for the inguinal nerve entrapment?

A. That is correct.

Q. Where is the situs of that entrapment at, Doctor?

A. That is assumed to be in the area of the groin as the scar tissue forms around that nerve as it crosses in front of the pelvis in the area of the ligament in that area.

Q. So the entrapment is in his abdomen area?

A. It is actually at the very top of the hip. The inguinal ligament crosses that area and creates a boundary. It's beyond the abdomen and right in the groin.

...

Q. On Exhibit 2 there is a mark in the groin area that is right at the hip area. Is that where the entrapment is? Is that what we were just referring to, Doctor?

A. That is correct.²⁰

¹⁸ *Id.* at 27-29.

¹⁹ *Id.*, Ex. 1 at 5.

²⁰ *Id.* at 32-33.

Dr. Carabetta testified that while claimant indicated he had a prior low back injury and a corresponding 5% impairment rating for such condition, claimant did not give him a very detailed account of his prior low back problems. According to Dr. Carabetta, claimant only told him about one prior low back injury. Dr. Carabetta was unaware if claimant had preexisting low back muscle spasm or structural change. He acknowledged that claimant had prior lumbar range of motion deficits, based on Dr. Prostic's 1993 report. Dr. Carabetta testified absent knowing if claimant had prior muscle spasm, he would not be able to rate claimant at 5% preexisting impairment, and he would have expected claimant to have lumbar muscle spasm in 1993 if claimant's 1987 low back injury was permanent.²¹

Dr. Carabetta indicated there was no support for claimant to have a 20% impairment rating to the body as a whole based on his low back.

PRINCIPLES OF LAW

K.S.A. 2008 Supp. 44-501(a) states in part: "the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends." K.S.A. 2008 Supp. 44-508(g) defines burden of proof as follows: "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

"The existence, nature and extent of disability of [the claimant] is a question of fact. Medical testimony is not essential to the establishment of these facts" ²² A claimant's testimony is sufficient to prove his or her physical condition.²³ A claimant shall not recover for the aggravation of a preexisting condition, except to the extent the work-related injury causes increased disability; any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.²⁴ It is respondent's burden to prove claimant's preexisting impairment.²⁵ Any preexisting functional impairment must be determined utilizing the *Guides*.²⁶

²¹ *Id.* at 34-35, 39.

²² *Chinn v. Gay & Taylor*, 219 Kan. 196, ¶ 3, 547 P.2d 751 (1976).

²³ *Graff v. Trans World Airlines*, 267 Kan. 854, 863-64, 983 P.2d 258 (1999).

²⁴ K.S.A. 2008 Supp. 44-501(c).

²⁵ *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 96, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

²⁶ *Webb v. Rose Villa, Inc.*, No. 1,047,270, 2012 WL 2890460 (Kan. WCAB Jun. 4, 2012).

K.S.A. 44-510d states:

(a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to [medical compensation and temporary total disability compensation]. If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

. . .

(14) For the loss of a foot, 125 weeks.

(15) For the loss of a lower leg, 190 weeks.

(16) For the loss of a leg, 200 weeks.

. . .

(21) Permanent loss of the use of a . . . foot, leg or lower leg . . . shall be equivalent to the loss thereof.

. . .

(22) For traumatic hernia, compensation shall be limited to the compensation under K.S.A. 44-510h and 44-510i and amendments thereto, compensation for temporary total disability during such period of time as such employee is actually unable to work on account of such hernia, and, in the event such hernia is inoperable, weekly compensation during 12 weeks, except that, in the event that such hernia is operable, the unreasonable refusal of the employee to submit to an operation for surgical repair of such hernia shall deprive such employee of any benefits under the workers compensation act.

(23) Loss of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.

(b) Whenever the employee is entitled to compensation for a specific injury under the foregoing schedule, the same shall be exclusive of all other compensation except the benefits provided in K.S.A. 44-510h and 44-510i and amendments thereto, and no additional compensation shall be allowable or payable for any temporary or permanent, partial or total disability

Every direct and natural consequence that flows from a compensable injury, including a new and distinct injury, is also compensable under the Workers Compensation Act. In *Jackson*, the Court held:

When a primary injury under the Workmen's Compensation Act is shown to have arisen out of the course of employment every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of a primary injury.²⁷

K.A.R. 51-7-8(c)(3) states: Each injury involving the hip joint shall be computed on the basis of a disability to the body as a whole.

ANALYSIS

Low Back Impairment

Whether claimant has low back impairment due to his August 8, 2008 accidental injury largely boils down to his credibility. Appellate courts are ill suited to assessing credibility determinations based in part on a witness' appearance and demeanor in front of the factfinder.²⁸ "One of the reasons that appellate courts do not assess witness credibility from the cold record is that the ability to observe the declarant is an important factor in determining whether he or she is being truthful."²⁹ While the Board conducts de novo review, the Board often gives some deference to a judge's findings and conclusions concerning credibility where the judge was able to observe the testimony in person.

Judge Sanders had two opportunities to personally observe the claimant's testimony. She noted that claimant told Dr. Koprivica that he was asymptomatic prior to the 2008 accidental injury, but told Dr. Prostic in 1993 that his 1987 injury resulted in six years of ongoing low back pain. If claimant had such symptoms for six years, it is questionable that such symptoms dissipated. Judge Sanders stated:

Claimant . . . discounted his prior injuries to the lumbar spine and initially testified he had no prior problems with his low back. However, under questioning, Claimant acknowledged that he had numerous injections to his low back prior to the 2008 accident and was hospitalized for a week due to severe low back pain and was off work for at least three to four months with injuries that included an injury to the lumbar spine. The Court finds Claimant's testimony about the nature and extent of his prior low back injuries not credible. It is found and concluded that claimant had a five percent preexisting impairment to his lumbar spine.³⁰

²⁷ *Jackson v. Stevens Well Service*, 208 Kan. 637, ¶ 1, 493 P.2d 264 (1972).

²⁸ *De La Luz Guzman-Lepe v. National Beef Packing Company*, No. 103,869, 2011 WL 1878130 (Kansas Court of Appeals unpublished opinion filed May 6, 2011).

²⁹ *State v. Scaife*, 286 Kan. 614, 624, 186 P.3d 755 (2008).

³⁰ ALJ Award at 9-10.

Dr. Prostic's 1993 report indicated claimant had pains in the center and right side of his low back. Dr. Prostic also noted claimant had right gluteus medius muscle tenderness. Claimant testified at the preliminary hearing that he had right-sided low back pain and buttocks pain. These complaints appear to be similar.

The Board adopts Judge Sanders' rationale in finding claimant had a 5% preexisting whole body impairment based on his prior low back condition. Such finding is supported by the testimony of Dr. Carabetta, Dr. Prostic and even Dr. Koprivica. Respondent proved claimant had a 5% preexisting low back impairment.

Claimant argues that his current low back impairment is at a different area than his prior low back impairment. The problem with this argument is that there is very little evidence, if any, that claimant's impairment is different. No medical records, other than the reports of the testifying physicians, were admitted into evidence. Therefore, it is difficult to determine whether claimant's current condition is new or different than his preexisting condition. However, the burden of proving new impairment is on claimant. Claimant did not carry his burden of proving that his 2008 low back injury resulted in any new impairment in excess of his preexisting impairment rating. Moreover, the Board has no difficulty in discounting Dr. Koprivica's indication that claimant's condition is similar to someone with loss of motion segment integrity.

Ilioinguinal Nerve Impairment

Claimant developed a hernia due to lifting a box during his FCE. According to the court-ordered physician, Dr. Carabetta, claimant's hernia surgery resulted in permanent irritation and impairment of his ilioinguinal nerve. Claimant's hernia and permanent ilioinguinal nerve root irritation were the direct and natural result of his original injury.

Based on *Lozano*,³¹ claimant asserts his ilioinguinal nerve injury provides him with a whole body injury. In *Lozano*, claimant had an inguinal hernia requiring surgery. Dr. Pedro Murati testified – without contradiction – that Mr. Lozano had a 10% whole body impairment based on injury to the ilioinguinal and genitofermoral nerves as a result of his hernia repair.³² The Kansas Court of Appeals indicated “the nerve injuries are not the same injury as the hernia injury and are not governed by K.S.A. 44-510d(a)(22).”³³

³¹ *Lozano v. Excel Corp.*, 32 Kan. App. 2d 191, 81 P.3d 447 (2003); but see *Rondon v. Tyson Fresh Meat, Inc.*, No. 98,101 (Kansas Court of Appeals unpublished decision dated Apr. 11, 2008).

³² *Id.* at 194. See also *Goudy v. Exide Technologies*, No. 106,385 (Kansas Court of Appeals unpublished decision dated Aug. 31, 2012).

³³ *Id.* at 193.

Dr. Koprivica testified a permanent injury to the ilioinguinal nerve *could* lead to whole body impairment. Dr. Koprivica testified any permanent groin impairment would involve the body as a whole, but he never testified that claimant actually had any groin impairment.

Dr. Carabetta testified consistent with his report that claimant's hernia surgery resulted in a permanent ilioinguinal nerve injury (neuritis). Dr. Carabetta indicated the neuritis caused impairment to claimant's right leg. In determining whether claimant's ilioinguinal nerve injury resulted in a scheduled or a non-scheduled disability, the situs of the resulting disability, not the situs of the trauma, determines the workers compensation benefits available.³⁴ Dr. Carabetta testified claimant's ilioinguinal nerve entrapment was at the hip, groin and pelvis and his report says claimant had intermittent burning and aching pain in his right groin, sometimes lasting a week, several times per year. The situs of the injury and the location of claimant's complaints are the same. While Dr. Carabetta limited claimant's ilioinguinal nerve impairment to the right leg, the Court of Appeals' decisions in *Lozano* and *Goudy* compel a finding that such impairment is to the body as a whole.

A groin, pelvis or hip injury is not covered by the schedule. A permanent injury that is not relegated to the schedule is an unscheduled injury to the body as a whole, even in situations where a physician limits impairment to the lower extremity, such as in cases concerning the hip.³⁵ The 7% right lower extremity impairment provided by Dr. Carabetta for the ilioinguinal neuritis converts to 3% to the body as a whole under the *Guides*.

The Board adopts Dr. Carabetta's 15% impairment rating for claimant's right lower extremity. A 15% right lower extremity rating converts to a 6% whole body rating. Combining claimant's 3% whole body rating for his ilioinguinal impairment with the converted 6% whole body rating for claimant's right lower extremity results in claimant having a 9% permanent impairment to the body as a whole.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, including the Award and stipulations, the Board finds the Award of Judge Sanders should be modified to reflect that claimant's ilioinguinal nerve injury resulted in a permanent 3% whole body impairment and an overall 9% whole body impairment rating. Judge Sanders' ruling is otherwise affirmed in all other respects.

³⁴ See *Bryant v. Excel Corporation*, 239 Kan. 688, 722 P.2d 579 (1986).

³⁵ *Dehaemers v. Elizabeth Layton Center*, No. 1,043,391, 2012 WL 4040452 (Kan. WCAB Aug. 1, 2012); *Feldkamp v. Russell Stover Candies*, No. 1,043,271, 2011 WL 1747807 (Kan. WCAB Apr. 13, 2011); *Mountford v. Metro Xpress*, No. 1,038,117, 2009 WL 5385885 (Kan. WCAB Dec. 21, 2009) and *Eubank v. State of Kansas*, No. 1,042,622, 2009 WL 2480261 (Kan. WCAB July 15, 2009).

AWARD

WHEREFORE, the Appeals Board modifies Administrative Law Judge Rebecca Sanders' August 27, 2012 Award as noted above.

Claimant is entitled to 108 weeks of temporary total disability compensation at the rate of \$483.49 per week or \$52,216.92 followed by 28.98 weeks of permanent partial disability compensation at the rate of \$483.49 per week or \$14,011.54 for a 9% functional disability, making a total award of \$66,228.46, all currently due and owing to the claimant, which is ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of February, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Honorable Rebecca Sanders